

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SEASPAN MANAGEMENT, LTD. and  
SEASPAN CORPORATION,

Plaintiffs,

V.

THE UNITED STATES OF AMERICA;

Defendant.

CIVIL NO. 08-CV-00504

IN ADMIRALTY

**ANSWER OF DEFENDANT UNITED STATES OF AMERICA**

COMES NOW, defendant United States of America, by and through the undersigned counsel, respectfully submits this Answer to Plaintiffs' Complaint as follows:

## **JURISDICTION & THE PARTIES**

1. Neither admits nor denies plaintiffs' allegations regarding the existence of admiralty and maritime jurisdiction or jurisdiction under the Federal Tort Claims Act, as these allegations raise questions of law for the Court.
2. Denied for lack of knowledge and information upon which to form a belief as to the truth of the matters asserted, except admits that the NEW DELHI EXPRESS ran aground on April 15, 2006.
3. Admits that the United States is a sovereign state, and neither admits nor denies plaintiffs' allegation that the United States has waived sovereign immunity pursuant to either the Suits in Admiralty Act, 46 U.S.C. §§ 30901-30918, or the Federal Tort Claims Act, 28 U.S.C. § 1346, as this allegation raises a question of law for the Court.

## CAUSE OF ACTION

4. Denied, except admits that the United States publishes charts and other publications regarding the waters of the East Coast of the United States, and that it establishes and maintains aids to navigation for the waters of the East Coast of the United States, including the navigable waterway known as the Kill Van Kull. The United States denies that the NEW DELHI EXPRESS was lost; upon information and belief, the United States believes that the ship was damaged, not lost.

5. Denied, except admits that the M/V NEW DELHI EXPRESS grounded in the vicinity of the waterway known as the Kill Van Kull.

6. Denied.

7. Denied.

#### **AFFIRMATIVE DEFENSES**

Defendant United States further responds to the Complaint by stating the following affirmative defenses:

#### **FIRST AFFIRMATIVE DEFENSE**

The Court lacks subject matter jurisdiction over Plaintiffs' claims against the United States.

#### **SECOND AFFIRMATIVE DEFENSE**

Any damages sustained by Plaintiffs were proximately caused by Plaintiffs' own carelessness, recklessness and/or negligence, and were not caused or contributed to in any manner through any fault, negligence or want of care of the United States of America, its agents, servants, employees, or anyone for whom the United States is responsible.

#### **THIRD AFFIRMATIVE DEFENSE**

If Plaintiffs were injured as alleged, which is not admitted but is specifically denied, such damages are attributable in whole or in part to the acts or omissions of third parties, for whose negligence the United States is not legally responsible.

WHEREFORE, having fully answered Plaintiffs' Complaint, the United States prays that the same be dismissed at Plaintiffs' cost, and that the Court grant the United States such further relief as may be just.

DATED: March 18, 2008

Respectfully submitted,

MARK FILIP  
Assistant Attorney General

MICHAEL J. GARCIA  
United States Attorney

/s/  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was filed using the Court's CM/ECF system, which will send electronic notification of the filing to counsel of record, and that the foregoing was deposited in the mail, postage prepaid, this 18<sup>th</sup> day of March, 2008, addressed to the counsel of record as follows:

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/s/  
MICHELLE T. DELEMARRE  
Admiralty Trial Attorney